IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 28484 of 2007(N)

(AGAINST THE JUDGMENT DATED 07/09/2007 IN CMA.31/2007 of DISTRICT COURT, KOTTAYAM AGAINST THE ORDER DATED 13/03/07 IN I.A.287/07 IN OS.19/2007 OF THE SUB COURT, PALA0

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PETITIONERS:

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1. **SINDHU, D/O.SUKUMARAN, MOOZHAYIL, VADAKKUMBHAGOM KARA, CHENGALAM EAST VILLAGE, ANICKADU.**

2. **BHARGAVI, W/O.SUKUMARAN, MOOZHAYIL, VADAKKUMBHAGOM KARA, CHENGALAM EAST VILLAGE, ANICKADU.**

3. **SWEPNA, W/O.SREE DATH, MOOZHAYIL, VADAKKUMBHAGOM KARA, CHENGALAM EAST VILLAGE, ANICKADU.**

4. **GANGA (MINOR), S/O.LATE SRI.SREEDATH, REPRESENTED BY HER MOTHER AND NATURAL GUARDIAN, SWEPNA, MOOZHAYIL, VADAKKUMBHAGOM KARA, CHENGALAM EAST VILLAGE, ANICKADU.**

BY ADV. SRI.P.C.HARIDAS

RESPONDENT:

V.M.GEORGE, S/O.MATHAI, AGED 52 YEARS, THECKEVAYALUMKAL HOUSE, ELAMKULAM KARA, ELAMKULAM VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.28484 OF 2007

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Dated this the 26th day of September 2007

JUDGMENT

This writ petition is filed against the order of the learned District Judge, Kottayam in C.M.A.No.31 of 2007. The said C.M.A. was preferred against the order of the Sub Court, Pala in I.A.No.287 of 2007 in O.S.No.19/2007. The suit is one for declaration and prohibitory injunction with respect to 3 schedules of properties and the disputed item is the 3rd item which is an alleged way. The court below granted an order restraining the defendants from causing any obstruction to the user of the red shaded portion of the road as seen in Ext.B6 plan. The matter was taken up in appeal and the learned District Judge by the order which is under challenge now modified the order whereby the restriction was imposed on the appellant by an order of temporary injunction from making any material alteration to the red shaded portion of the way described in Ext.B6 plan. The court also deleted the direction giving permission to the plaintiffs to use the way. Plaintiffs are assignees of the property from some of the owners. There was a suit for specific performance of a contract. It was with respect to a property which also takes in a way having a width of 16 ft. and length

of 890 links. The learned District Judge in paragraph 12 of his order found that the appellant therein became the absolute owner of the property having an extent of 1 acre 21 cents and 360 sq. links including the plaint schedule item No.3 which is a way. It also found that it is clear from the sale deed that the entire way starting from the eastern public road had been conveyed in favour of the appellant. The court also opined that it may be true that the prior owners of the property were using the red shaded portion of the road, but the road passes itself is conveyed to the appellant. So the court found that the plaintiffs cannot be held to be entitled to use the pathway before a final adjudication of the case by the court. In order to preserve the property till a final decision, the court directed the appellant not to make any material alteration to the red shaded portion of the way as described in Ext.B6 plan.

2.So, from a perusal of the order passed by the learned District Judge, the learned District Judge had given great reliance to the decree of specific performance and the delivery whereby the appellant before that court was put in possession of the property including the pathway which is the subject matter of the suit. As observed by it, it may be a case where the plaintiffs may be able to establish about the right. But, before proving at least to the prima facie satisfaction the court cannot grant an order of injunction.

Therefore, I do not find any illegality or irregularity passed by the court below and the writ petition is dismissed. But, I make it clear that the court has to dispose of the matter untrammelled by the observations contained in the order passed by the trial court or the appellate court and being a matter which relates to a pathway, I direct the trial court to try and dispose of the matter as expeditiously as possible, and not later than 3 months from today.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-